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LARSON AND TAYLOR
1227 TWENTY-THIRD STREET SOUTH
ARLINGTON, VA 22202

| EXAMINER | |
|-----------|--------------|
| BENSON, R | |
| ART UNIT | PAPER NUMBER |
| 132 | 17 |

DATE MAILED:

Below is a communication from the EXAMINER in charge of this application
COMMISSIONER OF PATENTS AND TRADEMARKS

08/16/88

ADVISORY ACTION

THE PERIOD FOR RESPONSE:

is extended to run 6 months from the date of the Final Rejection

continues to run _____ from the date of the Final Rejection

expires three months from the date of the final rejection or as of the mailing date of this Advisory Action, whichever is later. In no event however, will the statutory period for response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date that the shortened statutory period for response expires as set forth above.

Appellant's Brief is due in accordance with 37 CFR 1.192(a).

Applicant's response to the final rejection, filed 7/22/88, has been considered with the following affect, but it is not deemed to place the application in condition for allowance:

1. The proposed amendments to the claim and/or specification will not be entered and the final rejection stands because:
 - a. There is no convincing showing under 37 CFR 1.116(b) why the proposed amendment is necessary and was not earlier presented.
 - b. They raise new issues that would require further consideration and/or search. (See Note).
 - c. They raise the issue of new matter. (See Note).
 - d. They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
 - e. They present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: _____

2. Newly proposed or amended claims _____ would be allowed if submitted in a separately filed amendment cancelling the non-allowable claims.

3. Upon the filing of an appeal, the proposed amendment will be will not be, entered and the status of the claims in this application would be as follows:

Allowed claims: 15, 16, 19

Claims objected to: 4-7, 11-14

Claims rejected: 1, 2, 3, 8, 9, 10, 15

However:

- a. The rejection of claims _____ on references is deemed to be overcome by applicant's response.
- b. The rejection of claims _____ on non-reference grounds only is deemed to be overcome by applicant's response.

4. The affidavit, exhibit or request for reconsideration has been considered but does not overcome the rejection.

5. The affidavit or exhibit will not be considered because applicant has not shown good and sufficient reasons why it was not earlier presented.

The proposed drawing correction has has not been approved by the examiner.

Other see attachment

THE PERIOD FOR RESPONSE IS EXTENDED TO TO RUN SIX MONTHS FROM THE DATE OF THE FINAL REJECTION. Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a) accompanied by the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee.

The amendment filed July 22, 1988 under 37 CFR 1.116 in response to the final rejection will be entered upon the filing of an appeal, but is not deemed to place the application in condition for allowance. Upon the filing of an appeal and entry of the amendment, the status of the claims would be as follows:

Allowed claims: none

Rejected claims: 5 and 14

Claims objected to: 1-4, 6-13, 15, 16, 18 and 19

The amendments to claims 1 and 9 contain errors. In line 14, "counterion" should be amended to, "halide counterion". The amendment to claim 9 should be to line 6 not the last line.

The declaration under 37 CFR 1.132 filed July 22, 1988 is insufficient to overcome the rejection of claims 1, 2, 8, 9 and 18 based upon Farge as set forth in the last Office action.

The declaration under 37 CFR 1.132 filed July 22, 1988 is insufficient to overcome the rejection of claims 1, 2, 3, 8, 9, 10 and 18 based upon Beattie in view of Berger, Farge, Furlenmeier and further in view of Dunn as set forth in the last Office action,

Serial No. 036124

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Art Unit 182

The Declaration is not probative. Compound A has already been indicated to be free of the prior art. Applicants have not compared their closest compound with the prior art compound. For example, applicants compound 11 (from the specification) should be compared with the prior art compounds E and J, not compound A. The results on page 28 of the specification cannot be compared with the results in the declaration because different strains of bacteria are used, except for the first organism, staphylococcus aureus 209 P JC-1, and the prior art compounds are better or the same by MIC measurement. A side by side comparison of the closest compounds of applicants invention with the prior art compounds is required.

Claims 4, 5, 6, 7, 11, 12, 13, 14, 15, 16 and 19 are free of the prior art.

Any inquiry concerning this communication should be directed to Robert Benson at telephone number 703-557-7694.

BENSON:ew

RB

8-01-88

Robert J. Warden

ROBERT J. WARDEN
SUPERVISORY PATENT EXAMINER
ART UNIT 182